

INDIANA PUBLIC DEFENDER COMMISSION MEETING MINUTES

December 16, 2004

The meeting commenced at 1:40 p.m. Present were: Chairman Norman Lefstein, Commission members Hon. Daniel Donahue, Les Duvall, Bettye Lou Jerrel, Sen. Timothy Lanane, Rebecca McClure, and Sen. Joseph Zakas. Absent were: Commission members Susan Carpenter, Rep. Ralph Foley, Monica Foster, and Rep. Bob Kuzman. Also in attendance were Larry Landis of the Indiana Public Defender Council and Bob Borgmann, Staff Counsel for the Commission.

1. Minutes from the September 29, 2004 meeting were reviewed and approved.
2. The Commissioners next considered and approved capital reimbursements as follows:

Reimbursements in Capital Cases		
December 16, 2004		
COUNTY	DEFENDANT	TOTAL
Delaware	Verner	\$9,623.64
Lake	Aki-Khuam	\$9,551.60
	Britt	\$3,582.25
	Jeter	\$7,812.00
	Maust	\$16,832.37
	Roche	\$7,072.65
Madison	Baer	\$9,934.69
Marion	Barker	\$1,181.83
	Covington	\$11,807.36
	Dye	\$16,669.02
	Holland	\$16,280.23
TOTAL		\$110,347.64

3. The Commission considered reimbursement for non-capital claims in the following amounts:

Reimbursement in Non-capital Cases--December 16,2004

COUNTY	PERIOD COVERED	TOTAL EXPENSE	ADJUS'T	ADJUS'D EXPEND.	40% REIMB.
ADAMS	7/01/04-9/30/04	\$27,982.58	\$0.00	\$27,982.58	\$11,193.03
ALLEN	7/01/04-9/30/04	\$609,336.40	\$0.00	\$609,336.40	\$243,734.56
BENTON	7/01/04-9/30/04	\$23,007.18	\$0.00	\$23,007.18	\$9,202.87
CARROLL	7/01/04-9/30/04	\$26,692.57	\$0.00	\$26,692.57	\$10,677.03
CLARK	7/01/04-9/30/04	\$90,123.67	\$3,551.67	\$86,572.00	\$34,628.80

DECATUR	7/01/04-9/30/04	\$30,675.88	\$14,445.26	\$16,230.62	\$6,492.25
FAYETTE	7/01/04-9/30/04	\$56,582.70	\$0.00	\$56,582.70	\$22,633.08
FLOYD	7/01/04-9/30/04	\$79,588.72	\$0.00	\$79,588.72	\$31,835.49
FOUNTAIN	7/01/04-9/30/04	\$15,626.86	\$4,253.98	\$11,372.88	\$4,549.15
FULTON*	4/01/04-7/30/04	\$20,604.22	\$285.03	\$20,319.19	\$8,127.68
FULTON*	7/01/04-9/30/04	\$32,861.04	\$4,748.32	\$28,112.72	\$11,245.09
GRANT	7/01/04-9/30/04	\$106,426.52	\$12,311.35	\$94,115.17	\$37,646.07
GREENE	7/01/04-9/30/04	\$51,373.29	\$60.00	\$51,313.29	\$20,525.32
HANCOCK	7/01/04-9/30/04	\$83,971.47	\$0.00	\$83,971.47	\$33,588.59
HENRY	7/01/04-9/30/04	\$37,189.11	\$0.00	\$37,189.11	\$14,875.64
JASPER	7/01/04-9/30/04	\$33,086.29	\$7,806.88	\$25,279.41	\$10,111.76
JAY	7/01/04-9/30/04	\$37,099.42	\$7,159.54	\$29,939.88	\$11,975.95
JENNINGS	7/01/04-9/31/04	\$25,825.52	\$0.00	\$25,825.52	\$10,330.21
KNOX	7/01/04-9/30/04	\$194,567.04	\$102,841.21	\$91,725.83	\$36,690.33
KOSCIUSKO	7/01/04-9/30/04	\$62,846.62	\$0.00	\$62,846.62	\$25,138.65
LAKE	7/01/04-9/30/04	\$686,497.76	\$0.00	\$686,497.76	\$274,599.10
LAPORTE	7/01/04-9/30/04	\$88,388.55	\$0.00	\$88,388.55	\$35,355.42
MADISON	7/01/04-9/30/04	\$370,039.62	\$888.81	\$369,150.81	\$147,660.32
MARION	7/01/04-9/30/04	\$1,767,468.78	\$12,233.77	\$1,755,235.01	\$702,094.00
MIAMI*	4/01/04-6-30/04	\$78,264.52	\$15,137.31	\$63,127.21	\$25,250.88
MIAMI*	7/01/04-9/30/04	\$67,618.64	\$4,277.16	\$63,341.48	\$25,336.59
MONROE	7/01/04-9/30/04	\$162,904.00	\$6,589.71	\$156,314.29	\$62,525.72
MONTGOMERY	7/01/04-9/30/04	\$72,792.26	\$30,189.12	\$42,603.14	\$17,041.26
NOBLE	7/01/04-9/30/04	\$85,596.15	\$0.00	\$85,596.15	\$34,238.46
OHIO	7/01/04-9/30/04	\$11,296.25	\$2,495.50	\$8,800.75	\$3,520.30
ORANGE	7/01/04-9/30/04	\$32,351.37	\$0.00	\$32,351.37	\$12,940.55
PARKE	7/01/04-9/30/04	\$16,055.62	\$0.00	\$16,055.62	\$6,422.25
PULASKI	7/01/04-9/30/04	\$26,641.43	\$7,841.50	\$18,799.93	\$7,519.97
RUSH	7/01/04-9/30/04	\$44,384.35	\$8,734.50	\$35,649.85	\$14,259.94
SCOTT	7/01/04-9/30/04	\$51,388.53	\$9,525.11	\$41,863.42	\$16,745.37
SHELBY	7/01/04-9/30/04	\$49,338.56	\$4,259.44	\$45,079.12	\$19,661.79
SPENCER	7/01/04-9/30/04	\$36,595.59	\$413.25	\$36,182.34	\$14,472.94
STEUBEN	7/01/04-9/30/04	\$71,063.43	\$22,226.89	\$48,836.54	\$19,534.62
SULLIVAN	7/01/04-9/30/04	\$19,184.90	\$378.50	\$18,806.40	\$7,522.56
SWITZERLAND	7/01/04-9/30/04	\$27,457.50	\$3,837.75	\$23,619.75	\$9,447.90
TIPPECANOE	7/01/04-9/30/04	\$193,671.30	\$4,334.97	\$189,336.33	\$75,734.53
VANDEBURGH	7/01/04-9/30/04	\$312,528.86	\$0.00	\$312,528.86	\$125,011.54
VIGO	7/01/04-9/30/04	\$258,357.11	\$50,005.05	\$208,352.06	\$83,340.82
WARREN	7/01/04-9/30/04	\$2,425.50	\$0.00	\$2,425.50	\$970.20

WASHINGTON	7/01/04-9/30/04	\$54,462.18	\$14,174.88	\$40,287.30	\$16,114.92
TOTAL		\$6,232,239.86	\$355,006.46	\$5,877,233.40	\$2,352,523.50

Bob Borgmann reported that Fulton County and Miami County submitted reimbursement claims for both the second and third quarters of 2004 and that both counties had indicated that they had not received notice for the deadline for submitting second quarter requests. Mr. Borgmann stated that five other counties had not submitted requests for this quarter and that he would contact those counties to determine if notice had been received. Concerning Marion County, Mr. Borgmann reported that Juvenile Court defense expenses were included in Marion County's request for reimbursement. Caseload assignment statistics for only the third quarter 2004 were submitted, but based upon those statistics, it appeared that Marion County Juvenile Division was in substantial compliance. Mr. Borgmann further noted that the unusually high adjustment made to the claim from Knox County resulted from an apparent transposition of numerals in the total expense claim. The total expense reported by Knox County was approximately \$194,000 while Mr. Borgmann computed the actual expense to be \$149,000.

The Commission approved payment of all reimbursements claims as recommended.

4. Mr. Borgmann next discussed the letter he received from Anthony Pappano, Chairman of the Perry County Public Defender Board, concerning requested amendments to the Perry County public defender contracts. In his letter, Mr. Pappano indicated that the Judge of the Perry Circuit Court informally agreed to the requested changes and once the amendments were formally executed, copies to the amended contracts would be forwarded to the Commission. The Commission approved payment of reimbursement claims currently being withheld upon receipt of the amended contracts.
5. The Commission next discussed the practice in Marion County criminal courts that if a defendant has more than one criminal case pending, all criminal cases involving that defendant are transferred to one court for docketing and disposition. The Commission discussed the effect this practice might have on counting of cases under Standard J of the Standards for Indigent Defense Services in Non-capital Cases. The Commission considered a memorandum prepared by Neal Bowling, dated January 12, 2004 and recommendations made by Larry Landis concerning how cases should be counted under Standard J. Mr. Landis' recommendations were as follows:
 1. Each cause number counts as one case regardless of the number of charges or counts.
 2. Each count or charge that is severed under the trial rules counts as one case.
 3. Separate counts or charges joined under the trial rules count as one case.
 4. If cases with separate cause numbers are consolidated for the purposes of docketing in the same court, each case is counted as a separate case.

The Commission moved and approved the adoption of the case counting policies recommended by Mr. Landis.

6. The Commission next considered the budget flow for the remaining fiscal year 2004-2005 and for the start of fiscal year 2005-2006. As anticipated at the last Commission meeting, the payment of reimbursement claims for capital and non-capital expenses approved at this meeting will need to be delayed until after the deposit of the next installment of funds in the Public Defense Fund. The next installment will be deposited in the Public Defense Fund in January 2005. The Commission further discussed the probability of having to pro-rate fourth quarter 2004 non-capital reimbursement claims, which will be considered by the Commission in March 2005. It appears the Public Defense Fund will not have sufficient funds to pay all anticipated reimbursement requests, and the anticipated shortage will be approximately \$400,000. It was agreed that a letter would be sent to participating county public defender agencies and to county auditors concerning the need to pro-rate reimbursements.
7. Chairman Lefstein reported to the Commission that the Indiana Supreme Court was requesting the General Assembly to increase the Public Defender Commission's 2005-2006 budget to \$9.5 million and the 2006-2007 budget to \$10 million. In light of the anticipated need to pro-rate future reimbursement requests, the Commission discussed strategies for requesting additional increases. Chairman Lefstein agreed to send a letter to Chief Justice Shepard regarding the Commission's intention of seeking additional funding, and Les Duvall agreed to contact Speaker of the House Bosma concerning an increase to the Public Defender Commission's budget. Les Duvall suggested that a special meeting of the Commission be held in early February to further review this topic. Chairman Lefstein indicated that a special meeting for could be called for that purpose and that Bob Borgmann would contact Commission members regarding possible meeting dates should a special meeting become necessary. Bob Borgmann is in the process of preparing a three-year estimated budget projection to cover the Commission's needs and will consult with Chairman Lefstein about this projection.
8. Chairman Lefstein next updated the Commission on various ongoing projects:

An advertisement for an assistant staff counsel for the Commission has been published and applications for the position have been received. Chairman Lefstein intends to begin interviews in January 2005. The group conducting the interviews will include Chairman Lefstein, Lilia Judson, Larry Landis, Susan Carpenter, and Bob Borgmann. Bob Borgmann will now have the title of Staff Counsel for the Indiana Public Defender Commission and the individual hired to fill the new position will be the Assistant Staff Counsel.

The *ad hoc* CR 24 Committee met on December 6, 2004 to discuss possible amendments to Criminal Rule 24, in light of the ABA's Revised Guidelines and the recently enacted Innocence Protection Act. Criminal Rule 24 and the ABA's Revised Guidelines differ in the manner in which defense counsel is qualified and appointed in a capital case. Under CR 24, the trial judge has the responsibility of appointing qualified defense counsel, and qualifications are based upon the number of years of criminal litigation experience and the number of felony jury trials. Under the ABA Guidelines, an independent authority, consisting of lawyers who are knowledgeable of death penalty law and capital defense representation are responsible for recruiting and certifying qualified attorneys, drafting

certification guidelines, assigning counsel to specific cases and monitoring performance. The Innocence Protection Act provides \$75 million in grant funds to be used for the death penalty training of prosecutors and defense counsel. The funds may not be used for direct legal representation in death penalty cases but may be used to establish and operate a system for providing qualified defense counsel. To be eligible for a grant, a state must develop and implement a plan for qualifying and appointing counsel along the lines recommended by the ABA Guidelines. Indiana, operating under the current provisions of CR 24, would not be eligible for funds under the IPA. The tasks of the *ad hoc* Committee are twofold: The first is to develop criteria for the qualification, monitoring and evaluation of death penalty counsel; and, second, to determine the make-up of an independent authority responsible for performing these functions. The *ad hoc* Committee will meet again in March 2005 to continue its discussions.

Chairman Lefstein and Bob Borgmann have prepared a letter notifying counties of the Commission's amendments to Standard J, which will be mailed shortly.

Updates to the Commission's website have been made.

Chairman Lefstein and Bob Borgmann are completing changes to a proposed standardized reporting form and to the annual report, both of which will be brought to the Commission at its next meeting for consideration.

9. The next regular meeting of the Commission was scheduled for March 22, 2005 at 12:00 noon.
10. The meeting was adjourned at 3:35 p.m.

Norman Lefstein, Chairman

Date